

STATE OF MICHIGAN
COURT OF APPEALS

JOHN KONIECZKA, by and through his legal
guardian, SUZANNE KONIECZKA, and
SUZANNE KONIECZKA, individually,

UNPUBLISHED
October 29, 2002

Plaintiffs-Appellants,

V

MICHIGAN DEPARTMENT of
TRANSPORTATION,

No. 234001
Court of Claims
LC No. 99-017479-CM

Defendant-Appellee.

Before: Holbrook, Jr., P.J., and Zahra and Owens, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendant's motion for summary disposition. We affirm.

Plaintiff John Konieczka was seriously injured in an automobile accident at the intersection of M-55 and M-37 in Wexford County. Plaintiffs sought to recover from defendant under negligence and negligence per se theories, contending that defendant breached its statutory duty to keep the highways under its jurisdiction in reasonable repair and reasonably safe for public travel, MCL 691.1402(1). The trial court granted defendant's motion for summary disposition, concluding that plaintiffs' claim was barred by governmental immunity as a matter of law. In granting defendant's motion for summary disposition, the trial court noted that the complaint alleged "a design defect and a signage defect, not a maintenance defect." The trial court's ruling was based primarily on our Supreme Court's decision in *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143; 615 NW2d 702 (2000).

On appeal, plaintiffs contend that the trial court erred in applying the *Nawrocki* decision retroactively. However, in *Adams v Dep't of Transportation*, __ Mich App __; __ NW2d __ (Docket No. 230268, issued 10/11/2002) slip op p 5, we ruled that the *Nawrocki* decision should be given full retroactive effect. Accordingly, the trial court did not err.

Plaintiffs also contend that the trial court erred in granting defendant's motion for summary disposition. Generally, we review de novo a trial court's ruling on a motion for summary disposition. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001).

Specifically, plaintiffs contend that the *Nawrocki* decision did not bar their complaint as a matter of law. However, the *Nawrocki* Court ruled that “the state or county road commissions have no duty, under the highway exception, to install, maintain, repair, or improve traffic control devices, including traffic signs.” *Nawrocki, supra* at 184. Thus, to the extent that plaintiffs alleged that defendant negligently failed to install rumble strips or other signs, the *Nawrocki* decision plainly indicates that those allegations were not pleaded in avoidance of governmental immunity. See generally *Nawrocki, supra* at 173-184.

Moreover, we do not believe that the trial court erred in construing the *Nawrocki* decision to bar allegations of design defect. Indeed, the *Nawrocki* Court opined as follows:

There is potentially no end to the creative and innovative theories that can be raised in support of the proposition that a highway accident, occurring upon even the most unremarkable thoroughfare, was, in fact, the result of inadequate or imperfect signage. Courts possess no greater insight than the state or county road commissions into matters involving traffic control devices, such as traffic signs. [*Id.* at 179.]

The Court further noted that “[w]hile a particular decision to ‘improve,’ ‘augment,’ or ‘expand’ a highway may be prudent and advisable, the decision nevertheless is for persons entrusted with the expenditure of taxpayer resources, not the courts.” *Id.* at 179 n 35. Thus, we believe that the *Nawrocki* decision recognized that state and county road commissions do not have a legal duty to improve the design of a roadway to make it safer.

Here, the gravamen of plaintiffs’ allegations was that defendant negligently failed to make additional improvements that would have, at least in theory, made the intersection safer. Plaintiffs’ allegations insufficiently alleged defendant negligently maintained either the roadway or traffic control devices that it had already installed. Consequently, the trial court did not err in concluding that the *Nawrocki* decision barred plaintiffs’ complaint as a matter of law.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Brian K. Zahra
/s/ Donald S. Owens